

WILLIS BENEFIELD.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

WILLIS BENEFIELD *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. The original documentary evidence in the case, transmitted to the House of Representatives.
3. Claimant's brief.
4. Solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 5th day of December, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

CASE OF WILLIS BENEFIELD.

To the honorable judges of the Court of Claims:

Your petitioner, Willis Benefield, of Sullivan county and State of Indiana, respectfully represents:

That on the 23d day of January, 1855, the honorable John G. Davis gave notice, under the rule, of his intention to move for leave to introduce a bill for the relief of your petitioner.

That on the 24th day of January, 1855, the honorable John G. Davis filed the petition of your petitioner in the House of Representatives of the United States, a copy of which petition is herewith filed, marked "K," which said petition was on said day referred to the Committee on Public Lands.

That on the 2d day of February, 1855, the honorable Mr. Henn, from the Committee on Public Lands, made a report upon the petition of your petitioner, which report is hereto attached, marked "O," and at the same time reported the following bill for the relief of your petitioner, marked "P," and which is hereto attached.

That he is informed and believes that no action was taken upon said bill by the House until the 3d day of March, 1855, when the same was referred by a general resolution to the Court of Claims, where said petition is now pending.

Your petitioner asks that his said petition may be docketed and considered, and such report may be made as he may be entitled to under the law and the regulations of said court.

WILLIS BENEFIELD.

DISTRICT OF COLUMBIA, }
Washington City, } ss:

H. D. Scott, being duly sworn, upon his oath, says that he has examined the Journal of the House of Representatives, and he believes that the action as stated in the petition of Willis Benefield as being had in said House is correct in substance and matter of fact.

H. D. SCOTT.

Sworn to before me—

SAMUEL HUNTINGTON,
Chief Clerk Court of Claims.

"K."

To the honorable the Senate and House of Representatives of the United States:

The undersigned, a citizen of Sullivan county, Indiana, respectfully represents:

That on the 21st day of December, 1847, he located land warrant No. 5202, on the northwest quarter of section 21, in township 9 north, range 9 west, in the Vincennes land district.

That the said tract was patented to him on the 10th day of June, 1849, as will appear by reference to the letter of the Commissioner of the General Land Office, marked "a."

He further represents that he took possession of said tract of land, and made lasting and valuable improvements thereon, never for a moment doubting the validity of his title until recently, when he was informed that the said tract had long before his entry, to wit, on the day of _____, A. D. _____, been selected for the Wabash and Erie canal, under the act of 3d March, 1854, and approved by the Secretary of the Interior on the 24th of March, 1852, as will appear by the letter marked "b."

He further represents that he made improvements on said land whilst he had the same in possession, under the entry and patent afore-

said, to the value of twelve hundred dollars, as will appear by the paper marked "c."

Therefore, inasmuch as he has acted in good faith in the premises, that by the mistakes of the officers of the government he has not only lost his land, but the proceeds of all his hard labor for many years, and is now turned out of doors with his family, at an advanced age, poor and penniless—

He prays that Congress may, by an act, grant him the right to enter, free of cost, other government lands, to the value of his improvements. And, as in duty bound, will ever pray.

WILLIS BENEFIELD.

"a."

GENERAL LAND OFFICE, *January 10, 1855.*

SIR: In reply to your letter of the 7th instant, I have the honor to inform you that bounty land warrant certificate No. 5202, for 160 acres, issued under the act of February 11, 1847, in the name of Willis Benefield, was patented in his favor June 10, 1849. The same was located, December 31, 1847, upon the northwest quarter of section 21, in township 9 north, of range 9 west, in the district of lands subject to sale at Vincennes, Indiana.

I have the honor further to state that this office can afford Mr. Benefield no relief in the premises.

I am, very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. JOHN G. DAVIS, *House of Representatives.*

"b."

GENERAL LAND OFFICE, *January 13, 1855.*

SIR: In answer to your verbal inquiry of to-day, I have the honor to inform you that the north half of section 21, township 9 north, of range 9 west, in the Vincennes district, Indiana, was selected for the Wabash and Erie canal, under the act of 3d March, 1845, and approved by the Secretary of the Interior on the 24th March, 1852.

I am, sir, with great respect, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. JOHN G. DAVIS, *House of Representatives.*

STATE OF INDIANA, }
Sullivan County, } ss:

Willis Benefield, of the county and State aforesaid, being duly sworn, says that he is the identical Willis Benefield who was a private

in Capt. Briggs' company, in the second Indiana regiment of volunteers, in the war with Mexico; that he served the term of one year, and received, under the act of Congress, a warrant for 160 acres, which he located on the northwest quarter of section 21, township 9 north, range 9 west, in the Vincennes district, and received a patent from the United States for the same; that, immediately after locating the same, he took possession of the said lands, and made valuable improvements thereon, under the belief that he had a good title for the same, and has never known anything to the contrary until recently, when he was informed that at the time of his entering said land the same had been conveyed to the State of Indiana, under an act of Congress appropriating lands to the State of Indiana, for the benefit of the Wabash and Erie canal.

WILLIS BENEFIELD.

Subscribed and sworn to before me November 23, 1854.

JOSEPH W. WOLFE, *Clerk.*

"c."

STATE OF INDIANA, }
Sullivan County, } ss:

William McGrew and James W. Thompson, being duly sworn, say that they are well acquainted with Willis Benefield, the individual who has made the within affidavit, and have been for the last fifteen years. They know him to be the same person who served as a private in Captain Briggs' company, in the war with Mexico, and to whom a land warrant issued, as within described. We know that the said Benefield located his warrant on the within-described land, and has made valuable improvements thereon. The land, at the time of locating the said warrant thereon, we consider was not worth more than Congress price, \$1 25 per acre; but, in consequence of the improvements made by the said Benefield, we consider the land to be worth, at this time, twenty-five hundred dollars, or \$15 per acre. We would further state that the price of lands lying in the vicinity of the land described has been greatly enhanced by the location of the Evansville and Crawfordsville railroad. The improvements thereon consist of about seventy acres being enclosed, and near sixty cultivated, with comfortable buildings thereon.

WILLIAM MCGREW.
JAMES W. THOMPSON.

STATE OF INDIANA, }
Sullivan County, } ss:

I, Joseph W. Wolfe, clerk of the circuit court in and for said county, certify that the above and foregoing affidavits, as subscribed by Willis Benefield, William McGrew, and James W. Thompson, were duly sworn to and subscribed before me.

In testimony whereof, I have hereunto set my hand and seal of said court, hereto affixed.

JOSEPH W. WOLFE, *Clerk.*

NOVEMBER 23, 1854.

STATE OF INDIANA, }
Sullivan County, } ss:

Be it known, on this 15th day of January, A. D. 1855, before me, the undersigned, a justice of the peace within and for said county, came personally James Gardner and William McGrew, who, being duly sworn, upon their oath do say that they are well acquainted with the northwest quarter of section 21, township 9 north, range 9 west, in Sullivan county, Indiana, and being the same tract of land that Willis Benefield, a soldier in the war with Mexico, located his land warrant on, and on which said Benefield now resides; which tract of land has been sold by the trustees of the Wabash and Erie canal. We consider the value of the improvements of the said tract of land, made by the said Benefield, to be of the value of twelve hundred dollars, separately and apart from the value of the land.

WILLIAM MCGREW.
JAMES GARDNER.

Subscribed and sworn to before me; and I certify the said James Gardner and William McGrew are credible witnesses.

WILLIAM C. McBRIDE, *Justice.*

JANUARY 1, 1855.

STATE OF INDIANA, }
County of Sullivan, } ss:

I, Joseph W. Wolfe, clerk of the circuit court within and for said county, certify that William C. McBride is a justice of the peace within and for said county, and that the within and foregoing signature, purporting to be his, is genuine.

Witness my hand and seal of said court hereto affixed.

JOSEPH W. WOLFE, *Clerk.*

JANUARY 15, 1855.

DISTRICT OF COLUMBIA, }
Washington City, } ss:

H. D. Scott, being duly sworn, upon his oath says that he has read the petition of Willis Benefield, and exhibits thereto, presented to the House of Representatives of the United States the 24th day of January, 1855, by the honorable John G. Davis, and from such examination, and a general knowledge of the subject derived from information in Sullivan county, Indiana, he believes the same is true in substance.

H. D. SCOTT.

Sworn to and subscribed before me this 3d day of May, 1856.

C. W. C. DUNNINGTON,
Justice of the Peace.

"O."

FEBRUARY 2, 1855.

Report of the Committee on Public Lands in the case of Willis Benefield.

Mr. HENN, from the Committee on Public Lands, to whom was referred the petition of Willis Benefield, asking relief on account of the failure of title to a certain tract of land located by him, made the following report :

That they have examined the papers filed in this case, and find the facts to be as follows : that said Benefield served for the term of one year as a soldier in Captain Briggs' company, second regiment Indiana volunteers, during the war with Mexico ; that for said service there was granted to him a land warrant (No. 5202) for one hundred and sixty acres of land, under the act of February 11, 1847; that on the 31st day of December, 1847, he located said land warrant on the northwest quarter of section 21, township 9 north, of range 9 west, in the district of lands subject to sale at the land office at Vincennes, Indiana; that on the 10th day of June, 1849, a patent was issued in his favor for said land; that said Benefield settled upon said land, and improved the same by fencing and cultivating between sixty and seventy acres, and by erecting buildings thereon, all of which improvements are estimated to be worth \$1,200; that said quarter-section has since been claimed by the State of Indiana as a part of the lands granted to said State for the construction of the Wabash and Erie canal, under the act of March 3, 1845, and the same was confirmed to said State under said act, by decision of the Secretary of the Interior, dated March 24, 1852; whereby, notwithstanding the issue of said patent to said Benefield, his title has wholly failed.

The committee are of the opinion that Mr. Benefield has been seriously damaged by the failure of title, as before related, and that the injury he has sustained has been occasioned wholly by the fault of the United States, and not on account of any laches or fault of his own, and therefore he ought to have relief. The committee have had some doubt as to the measure of damages that ought to be allowed, but are of opinion that at least six hundred and forty acres of land ought to be granted to said Benefield, in lieu of the one hundred and sixty acres to which title has failed; and therefore they report a bill authorizing him to enter that quantity free of cost, the passage of which they respectfully recommend.

"P."

FEBRUARY 2, 1855.

Mr. HENN, from the Committee on Public Lands, reported the following bill :

A BILL for the relief of Willis Benefield, of Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Willis Benefield, of the

State of Indiana, be, and he is hereby, authorized to enter, in legal subdivisions, free of cost, the quantity of six hundred and forty acres of any of the public lands of the United States which may be subject to private entry at a minimum price not exceeding one dollar and twenty-five cents per acre, upon a surrender of the patent for the northwest quarter of section number twenty-one, in township number nine north, of range number nine west, in the district of lands subject to sale at the land office at Vincennes, Indiana, and a proper relinquishment of any title he may have in the same by virtue of such patent.

SEC. 2. *And be it further enacted*, That the entry of the land hereby authorized shall be made under such regulations as shall be prescribed by the Commissioner of the General Land Office, and the same shall be in full satisfaction of any claim to bounty land which said Benefield may have under the act of February 11, 1847; and land warrant number five thousand two hundred and two, issued to said Benefield under said act, shall be surrendered and cancelled prior to any entry hereby authorized.

Affidavit of claimant.

STATE OF INDIANA, }
 Sullivan County, } *sc* :

Willis Benefield, of the county and State aforesaid, being duly sworn, says that he is the identical Willis Benefield who was a private in Captain Briggs' company, in the second Indiana regiment of volunteers, in the war with Mexico; that he served the term of one year, and received, under the act of Congress, a warrant for 160 acres, which he located on the northwest quarter of section 21, township 9 north, range 9 west, in the Vincennes district, and received a patent from the United States for the same; that immediately after locating the same he took possession of the said lands, and made valuable improvements thereon, under the belief that he had a good title for the same, and has never known anything to the contrary until recently, when he was informed that at the time of his entering said land the same had been conveyed to the State of Indiana, under an act of Congress appropriating lands to the State of Indiana, for the benefit of the Wabash and Erie canal.

WILLIS BENEFIELD.

Subscribed and sworn to before me November 23, 1854.

JOSEPH W. WOLFE, *Clerk.*

Affidavit of McGrew and Thompson.

STATE OF INDIANA, }
 Sullivan County, } *ss* :

William McGrew and James W. Thompson, being duly sworn, say that they are well acquainted with Willis Benefield, the individual who

has made the within affidavit, and have been for the last fifteen years ; they know him to be the same person who served as a private in Captain Briggs' company in the war with Mexico, and to whom a land warrant issued, as within described ; we know that the said Benefield located his warrant on the within-described land, and has made valuable improvements thereon ; the land at the time of locating the said warrant thereon we consider was not worth more than the Congress price—\$1 25 per acre ; but in consequence of the improvements made by the said Benefield, we consider the same to be worth at this time the sum of \$2,400, or \$15 per acre ; we would further state that the prices of lands lying in the vicinity of the land described within has been greatly enhanced by the location of the Evansville and Crawfordsville railroad. The improvements thereon consist of about seventy acres being enclosed, and near sixty cultivated, with comfortable buildings thereon.

WILLIAM MCGREW.

JAMES W. THOMPSON.

STATE OF INDIANA, }
Sullivan County. }

I, Joseph W. Wolfe, clerk of the circuit court in and for said county, certify that the above and foregoing affidavits, as subscribed by Willis Benefield, William McGrew, and James W. Thompson, were duly sworn to and subscribed before me.

In testimony whereof, I have hereto set my hand and seal of said
[L. s.] court, hereto affixed, November 23, 1854.

JOSEPH W. WOLFE, *Clerk.*

Affidavit of Gardner and McGrew.

STATE OF INDIANA, }
Sullivan County, } *set:*

Be it known that on this 15th day of January, A. D. 1855, before me, the undersigned, a justice of the peace within and for said county, came personally James Gardner and William McGrew, who, being duly sworn, upon their oaths do say that they are well acquainted with the northwest quarter of section 21, township 9 north, range 9 west, in Sullivan county, Indiana ; and being the same tract of land that Willis Benefield, a soldier in the war with Mexico, located his land warrant on, and on which said Benefield now resides ; which tract of land has been sold by the trustees of the Wabash and Erie canal. We consider the value of the improvements of the said tract of land made by the said Benefield to be of the value of \$1,200, separately and apart from the value of the land.

WILLIAM MCGREW.
JAMES GARDNER.

Subscribed and sworn to before me; and I certify the said James Gardner and William McGrew are credible witnesses.

WILLIAM C. McBRIDE, *Justice.*

JANUARY 15, 1855.

STATE OF INDIANA, }
 County of Sullivan, } ss :

I, Joseph W. Wolfe, clerk of the circuit court within and for said county, certify that William C. McBride is a justice of the peace within and for said county, and that the within and foregoing signature, purporting to be his, is genuine.

Witness my hand and seal of said court hereto affixed, January
 [L. s.] 15, 1855.

JOSEPH W. WOLFE, *Clerk.*

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *January 13, 1855.*

SIR: In answer to your verbal inquiry of to-day, I have the honor to inform you that the north half of section twenty-one, in township nine north, of range nine west, in the Vincennes district, Indiana, was selected for the Wabash and Erie canal, under the act of the 3d March, 1845, and approved by the Secretary of the Interior on the 24th March, 1852.

I am, sir, with great respect, your obedient servant,
 JOHN WILSON, *Commissioner.*

Hon. JOHN G. DAVIS,
House of Representatives.

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *July 4, 1858.*

SIR: I have the honor to return herewith the petition of Willis Benefield, filed by you on the 31st ult., and, in regard to the matter, to state that it appears from the records of this office that the north half of section twenty-one, township nine north, of range nine west, Vincennes district, Indiana, was selected, September 28, 1846, for the Wabash and Erie canal, under the provisions of the act of Congress approved March 3, 1845, and approved by the Secretary of the Interior March 24, 1852. The original list of the selections by the State authorities is not to be found on the files of this office, but, if material, a call for it will be made upon the officer in charge at Vincennes. It also appears that the northwest quarter of the above-mentioned section, township, and range, a tract embraced by the said selection, was located, December 31, 1847, with bounty land warrant No. 5202, issued under the act of 11th February, 1847, in the name of Willis Benefield, and that a patent for said tract issued to Willis Benefield on the 10th June, 1849.

The register at Vincennes was, on the 12th July, 1854, advised of the illegality of the location, and instructed to inform Mr. Benefield

of the same, and request a return of the patent for cancellation; this having been done, and a relinquishment of the tract by Mr. Benefield, dated February 22, 1855, filed in this office, the location was cancelled, and the warrant transmitted to the Hon. John G. Davis March 2, 1855.

Very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. R. H. GILLET,
Washington, D. C.

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *August 13, 1858.*

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant, and to enclose certified copies of the papers connected with the case of the location of the land warrant No 5202, for 160 acres, issued under the act of 1847, in the name of Willis Benefield.

Very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. R. H. GILLET,
Solicitor Court of Claims, Washington, D. C.

GENERAL LAND OFFICE, *August 13, 1858.*

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications from the records and files of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of
[L. S.] Washington, on the day and year above written.

THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

Letter from the Hon. John G. Davis.

HOUSE OF REPRESENTATIVES,
January 7, 1855.

DEAR SIR: The case to which I called your attention a few days ago is this.

Willis Benefield, of Sullivan county, Indiana, served one year in the Mexican war, for which he received a land warrant, which he located on the northwest quarter of section twenty-one, township 9, range 9 west, and received a patent therefor. He moved on the land and made

valuable improvements. Lately it has been found to belong to the Wabash and Erie canal, and by them sold, and Benefield loses his land and all his labor on the premises.

These facts being proved, I think Congress will grant him other lands to the value of his improvements. I presume your office will return him his warrant, or refund him the amount in cash; am I right in this?

Please send me a letter, stating the facts in regard to his entry of the land, and that at that time it was the property of the canal, that I may make out a case for the action of Congress, at your earliest convenience.

The session is short and I am anxious to get the case up at the earliest moment.

Your obedient servant,

JOHN G. DAVIS.

Hon. JOHN WILSON, *Commissioner, &c.*

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *January 10, 1855.*

SIR: In reply to your letter of the 7th instant, I have the honor to inform you that bounty land warrant certificate No. 5202, for 160 acres, issued under the act of February 11, 1847, in the name of Willis Benefield, was patented in his favor on the 10th of June, 1849; the same was located December 31, 1847, upon the northwest quarter of section 31, in township 9 north, of range 9, west, in the district of lands subject to sale at Vincennes, Indiana.

I have the honor further to state that this office can afford Mr. Benefield no relief in the premises.

I am, very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

Hon. JOHN G. DAVIS,

House of Representatives.

Letter from Hon. John G. Davis.

WASHINGTON, *February 2, 1855.*

SIR: Enclosed I return the patent issued to Willis Benefield for 160 acres of land, which was taken for canal purposes; you will please cancel the same and return me his land warrant.

Respectfully, your obedient servant,

JOHN G. DAVIS.

Hon. JOHN WILSON,

Commissioner General Land Office.

*Letter from the Commissioner of the General Land Office.*GENERAL LAND OFFICE, *February 12, 1855.*

SIR: In reply to your letter of the 2d instant, I have the honor to state that before the patent of Willis Benefield can be cancelled and his warrant returned, the patent must be relinquished in the manner and form prescribed in the third paragraph of the enclosed circular, of the 19th of January, 1854. Said patent is herewith enclosed.

Very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

Hon. JOHN G. DAVIS,
House of Representatives.

Letter from Hon. John G. Davis.

HOUSE OF REPRESENTATIVES,
February 29, 1855.

SIR: Enclosed is the patent of Willis Benefield, also his deed of relinquishment for the land therein mentioned. Will you please enclose me, before I leave here, Mr. Benefield's land warrant.

Respectfully, your obedient servant,

JOHN G. DAVIS.

Hon. JOHN WILSON, *Commissioner, &c.*

Release by W. Benefield.

Know all men by these presents that I, Willis Benefield, of Sullivan county, Indiana, do hereby release to the United States all the right, title, and claim that I hold in and to the northwest quarter of section twenty-one, in township nine north, of range nine west, estimated to contain one hundred and sixty acres, selected in the Vincennes land district, and in Sullivan county, Indiana.

Given under my hand and seal this 22d day of February, A. D. 1855.

WILLIS BENEFIELD. [L. s.]

STATE OF INDIANA, *Sullivan County, set:*

I, James H. Reed, recorder in and for said county, certify that Willis Benefield this day acknowledged the execution of the above deed.

I further certify that I have duly recorded this deed in book L, page 578; and that the records of this office show no encumbrance upon said land.

Witness my hand and seal of office hereto attached, at Sullivan, [L. s.] February 22, 1855.

JAMES H. REED,
Recorder Supreme Court of Indiana.

Location by W. Benefield.

LAND OFFICE AT VINCENNES.

Received at this office November 20, 1847.

JAMES S. MAYES, *Register.*

NOVEMBER 20, 1847.

I, Willis Benefield, of Sullivan county, Indiana, do hereby locate the northwest quarter of section twenty-one, township number nine north, of range number nine west, containing one hundred and sixty acres, in satisfaction of the warrant herein mentioned.

WILLIS BENEFIELD.

Attest:

JAMES S. MAYES, *Register.*

SAMUEL WISE, *Receiver.*

[This location cancelled, see letter to register, Vincennes, Indiana, March 2, 1855.]

LAND OFFICE, *Vincennes, December 31, 1847.*

We certify that the above location is correct, being in accordance with law and instructions.

JAMES S. MAYES, *Register.*

SAMUEL WISE, *Receiver.*

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *March 2, 1855.*

SIR: The location, in the name of Willis Benefield, with military land warrant No. 5202, for 160 acres, act of 1847, upon the northwest quarter-section twenty-one, township 9, range 9 west, has this day been cancelled, because said location interferes with a grant for the benefit of the Wabash and Erie canal, under the act of Congress approved March 5, 1845, and the warrant certificate has been returned to said Benefield, care of Hon. John G. Davis.

You will please enter the cancellation on the books of your office.

Very respectfully, your obedient servant,

JOHN WILSON, *Commissioner.*

REGISTER OF THE LAND OFFICE,

Vincennes, Indiana.

Letter from Commissioner of the General Land Office.

GENERAL LAND OFFICE, *March 2, 1855*

SIR: I have the honor herewith to transmit military bounty land warrant certificate No. 5202, for one hundred and sixty acres, act of 1847; the location having been cancelled according to the request

contained in your letter of the 29th ultimo, the receipt of which you will please acknowledge.

Very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. JOHN G. DAVIS,
House of Representatives.

GENERAL LAND OFFICE, *August 13, 1858.*

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the patent records of this office.

In testimony whereof, I have hereunto subscribed my name and
[L. S.] caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Know ye, that in pursuance of an act of Congress, entitled "An act to raise for a limited time an additional military force, and for other purposes," approved February 11, 1847, Willis Benefield, private in Captain Briggs' company, second regiment Indiana volunteers, having deposited in the General Land Office a warrant in his favor, numbered 5202, there is therefore granted by the United States unto said Willis Benefield, and to his heirs, the northwest quarter of section twenty-one, in township nine north, of range nine west, in the district of lands subject to sale at Vincennes, Indiana, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, which said tract has been located in satisfaction of the above-mentioned warrant, in pursuance of the act of Congress above mentioned, approved February 11, 1847; to have and to hold the said part of said section of land, with the appurtenances thereof, unto the said Willis Benefield, his heirs and assigns forever.

In testimony whereof, I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.
[L. S.] Given under my hand, at the city of Washington, the tenth day of June, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the twenty-third.

By the President:

ZACHARY TAYLOR,
By THOMAS EWING, JR.,
Secretary.

N. SARGENT, *Recorder of the General Land Office.*

Recorded, volume 18, page 169.

Cancelled. See letter to register, March 2, 1855.

IN THE COURT OF CLAIMS.

WILLIS BENEFIELD *vs.* THE UNITED STATES.*Brief for petitioner.*

The petitioner, in 1847, located a land warrant upon the northwest quarter of section twenty-one, township 9, range 9 west, in Indiana, and on the 10th of June 1849, a patent was issued to him by the United States for it.

He took possession of the land, cultivated it, and made valuable improvements upon it. It was afterwards claimed by the trustees of the Wabash and Erie canal, by virtue of a grant from the United States for the purpose of completing said canal from Terre Haute to the Ohio river. It was sold by the trustees, and the purchaser ousted the petitioner of his possession, taking all the improvements.

The evidence shows that at the time Benefield took possession of the land it was worth but \$1 25 per acre, or \$200; that he made improvements to the value of \$1,200; and that the land enhanced in value, while he held it, to \$2,500. He is, therefore, entitled to recover from the United States the difference between \$1 25 and \$15, and also the value of his improvements. This is the amount of his actual loss. The first item is \$13 75 per acre, or \$2,200, to which the improvements, \$1,200, should be added, making \$3,400.

I submit that he is entitled to a recovery for this amount.

R. W. THOMPSON,
Attorney for Petitioner.

MAY, 1858.

IN THE COURT OF CLAIMS.

WILLIS BENEFIELD *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON ARGUMENT.

Claim for the value of a quarter section of land and improvements patented to claimant, which had been previously granted by Congress for the use of the Wabash and Erie canal.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

1. The lands in the Vincennes land district, Indiana, of which this quarter section was a part, were surveyed prior to March 3, 1845.

This is a historical fact, but shown by the surveys in the General Land Office.

2. That on the 3d of March, 1845, Congress passed "an act to grant certain lands to the State of Indiana, the better to enable the State to extend and complete the Wabash and Erie canal from Terre Haute to the Ohio river."

The first section of this act provides (5 U. S. L., 781) "that there

be, and hereby is, granted to the State of Indiana, for the purpose of aiding said State in extending and completing the Wabash and Erie canal from Terre Haute, in the county of Vigo, in said State, to the Ohio river, at Evansville, in said State, as the course thereof has been established and surveyed by the authority of said State, one moiety of the public lands, (remaining unsold, and not otherwise disposed of, encumbered, or appropriated,) in a strip of five miles in width on each side of said canal, to be selected by an agent or agents to be appointed by the governor of said State, subject to approval of the Secretary of the Treasury of the United States, reserving to the United States each alternate section (or other proper subdivision of said land) from one end of the said canal to the other; and before the selections, to be made as aforesaid by such agent or agents, shall be deemed to have been made and perfected, a chart or charts, showing the courses and distances and points of termination of said canal, shall be reported, or caused to be reported, by the governor of Indiana, or by some person or persons by him appointed, to the Commissioner of the General Land Office.

“SEC. 2. That, for the purpose hereinbefore mentioned, there be, and hereby is, granted to the said State, in addition to the grant hereinbefore provided for, one moiety of all the other lands in the Vincennes land district in said State, and which remain, as aforesaid, unsold, and not otherwise disposed of, encumbered, or appropriated, to be selected under the authority and by the direction of the governor of said State: *Provided*, That in the selection of the lands by this section provided for, no lands shall be comprehended which, in the first section of this act, are (in alternate sections or other proper subdivisions) directed to be reserved as aforesaid; and the lands so selected shall be reported, or caused to be reported, by the governor of the State to the register of the land office at Vincennes, before such selection shall be deemed to be made and completed.

“SEC. 3 That all the lands by the first and second sections of this act granted as aforesaid shall, after the selections thereof shall have been made and completed as aforesaid, be subject to be disposed of by the general assembly of said State, for the purpose aforesaid, and no other; and the President shall direct the further sales of the public lands in the Vincennes land district aforesaid, to be suspended until the governor of said State shall have caused the selections aforesaid to be made and perfected as aforesaid, and shall have notified the Secretary of the Treasury thereof: *Provided*, That such suspension shall not continue longer than twelve months from and after the passing of this act ”

3. That the quarter section in question was not within the five miles granted by the first section of the act, but was included in those granted by the second section. (Information obtained at the land office.)

4. That the governor caused the charts mentioned in the act to be filed in the General Land Office. (Information from the land office.)

5. That the President issued his proclamation withdrawing the lands from sale in the Vincennes district, as provided in the third section of said act.

6. That, under the authority of the governor of Indiana, the selections were made under the second section of said act, and reported to the register of the land office at Vincennes, on the 28th of September, 1846. (Letter of the Commissioner General Land Office, July 4, 1858.)

7. That his selection covered the quarter section in question. (Id. Letter.)

8. That on the 31st of December, 1847, three months after such selection by the governor, the claimant, Benefield, located his bounty land warrant No. 5202, issued under the act of the 11th of February, 1847, (9 U. S. L., 123,) upon this same quarter section, and on the 10th of June, 1849, received a patent therefor. (Id. Letter.)

9. That when the error was discovered, the land office, on the 12th of July, 1854, notified Benefield, so that he might return the patent issued to him for cancellation, if he desired, which he did, and he executed and acknowledged a relinquishment dated February 22, 1855, stating that I "do hereby release to the United States all the right, title, and claim that I hold in and to" the land in question. This relinquishment was duly acknowledged according to the laws of Indiana. On the return of the patent and the receipt of this release, on the 2d of March, 1855, the location made by Benefield, and filed, and on which the patent was issued, was duly cancelled at the General Land Office. (See Davis' and Commissioner's letters, and the release.)

10. That on the 2d of March, 1855, Benefield's bounty land warrant was returned to him with the location cancelled, so that it could be again located by him. Mr. Davis, M. C., on returning, on the 2d of February, 1855, the patent, requested it to be cancelled and the original warrant to be returned; and this was done on the 2d of March, as is shown by the Commissioner's letter.

11. The claimant is at liberty to locate his bounty land warrant at any time upon any public lands open to entry at private sale, precisely the same as if it had never been located.

12. The facts in this case warrant the inference that Benefield in locating, and the Land Office in issuing the patent, acted under a misapprehension as to whether the land in question was open to entry or not.

13. The patent contains no guaranty of title.

LEGAL PROPOSITIONS.

FIRST. *A conveyance of lands, when there is no covenant of warranty, seizin, or of legal right to convoy, does not raise a legal or equitable liability in case of failure of the grantor's title.*

Without covenants in relation to the right to convey, or in regard to title or warranty, no liability can accrue, because the grantor made no agreement upon the subject, and could not, therefore, violate any. No implied obligation can be predicated upon a deed of conveyance, which merely transfers the grantor's interest, if he has any. If a covenant of warranty or seizin were inserted in a government patent it would be void, because there is no law authorizing any officer of government to enter into such a covenant. The absence of any such

law is ample evidence that it was not the intention of Congress to clothe any person with such power, and none has been exercised in this case.

SECOND. *In case of mutual mistake of the parties, no liability arises to either party, and all that either can ask is to annul the contract and be restored to his original condition.*

The evidence in this case clearly shows that both parties acted under a mistake in relation to the fact whether the land in question was open to entry at private sale. Benefield must have believed it liable to entry or he would not have located upon it, unless, indeed, he supposed if he could procure a patent he would hold the land whether it had been appropriated to the use of the canal or not. This he does not state, or admit; and, therefore, it is presumed that he did not know that the land in question had been transferred by a law of Congress and the act of the governor, from the government to the State of Indiana, for the use of the Wabash and Erie canal.

The local and general land offices equally made a mistake. The law vesting the land in the State, on the location by the governor, passed on the 3d of March, 1845, and the location by the governor and schedule of selections was made on the 26th of September, 1846, and filed with the register of the Vincennes land office. Benefield located his warrant on the 31st of December, 1847, and obtained his patent on the 10th of June, 1849. The register who permitted the location at Vincennes, and the commissioner who issued the patent, overlooked the fact that this very lot had been included in the governor's list of selections. Neither could have had any object in misleading him, but clearly acted under a mistake. The fact of Benefield having made a location on this lot may have induced them to be less vigilant than they ought to have been, and that may have been the real cause of their mistake.

Certainly the government did not mislead the claimant any more than he misled the government. Both fell into the same error in supposing that the land in question belonged to the United States and was on sale. Benefield was as much in fault as the government, and cannot now throw the responsibility of their common mistake upon the latter. It is a case where neither is in fault, or both are; and in either case each must bear his own loss, as in the case of damages by collision, where both vessels are equally in fault. In such cases it is well settled that neither party can recover. (See *Schooner Catharine vs. Dickinson*, 17 How., 170.)

THIRD. *If the claimant had the means of knowing whether the government owned that lot on which he located his warrant, he has no right to complain if he did not resort to that means to inform himself.*

The facts show that the claimant had the means of knowing who was the owner of the land in question.

1. There was the act of the 3d of March, 1845, which was a public law, of which all persons were bound to take notice, vesting in the State of Indiana one-half of the lands in the Vincennes land district, to be selected by the governor.

2. The provision for, and proclamation of the President, withdrawing for a year all the unsold lands in the district.

3. The report of the governor, or his agent, filed in the office of the register of the Vincennes land office, showing the selections made by him, which, under the law, vested in the State.

4. The general notoriety which naturally attend transactions of so public a nature where they occur.

Through these instrumentalities he had the same means of knowing which the government had. If he had made inquiry and investigated, he would have known that the government did not own the land at the time he made his location. If he omitted to do so, he must bear the consequences. He was the first mover in the matter, and committed a mistake. Having done so, he cannot complain that others followed him in his mistake. It was as much his duty to see that he located upon the right land as it was that of the government giving a patent for it. When at the register's office in the Vincennes district he had it in his power to have looked at the list of lands selected by the governor, and see whether he was locating upon government or State lands. If he had done so he would have avoided his error and the consequences. For his omission in this respect he can blame no one but himself, and cannot now throw the consequences flowing from it upon the government.

FOURTH. Having received back his land warrant, cancelled his patent, and relinquished his claim to the land, the contract between the parties must be considered as rescinded on both sides, and, consequently, no claim for damages can be sustained by either party.

The evidence shows that the patent was voluntarily returned to the General Land Office to be cancelled, and the original warrant restored at the request of the claimant. The government had no power to compel either step. From the evidence it clearly appears that he wished his warrant returned, that he might relocate it, and he relied upon Congress to make him a grant of other lands to compensate him for the loss of his improvements. He was the moving party in the arrangement, restoring things to their original condition. He did not then assert a legal right upon the government, but relied upon the liberality of Congress to relieve him from the consequences of his mistake in locating upon granted lands. So far as legal right is concerned, the transaction was settled and ended. If Congress chooses to be so liberal as to relieve him from the consequences of his own error, it can do so. It does not need the advice of this court telling it that it ought to be liberal; and if it did, this court is not authorized to give it. It cannot consider the question of damages, because none, in a legal sense, have been sustained, and none have been proved by competent evidence; and for these reasons that question has not been considered in the preparation of this brief.

As the claimant has no legal rights to be ascertained by the court, and everything depends upon the discretion and liberality of Congress, the case should be dismissed, leaving the party to go to Congress if he chooses.

R. H. GILLET, *Solicitor.*

AUGUST, 1858.

IN THE COURT OF CLAIMS.

MAY 30, 1859.

WILLIS BENEFIELD *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the court.

The petitioner, a soldier in the Mexican war, held a land warrant, No. 5202, for 160 acres, which, on the 31st December, 1847, he located on the northwest quarter of section 21, township 9 north, of range 9 west, Vincennes district, Indiana, and he received a patent for the same June 10, 1849. He entered upon the possession of the land and made improvements thereon, which are described in the evidence as consisting "of about 70 acres being enclosed, and near 60 cultivated, with comfortable buildings thereon." In 1854 it was ascertained that the land thus located by the petitioner had been previously disposed of by the United States, and on the 12th July, 1854, the petitioner was informed of the fact. On the 7th January, 1855, he requested that his warrant might be returned to him; and on his releasing to the United States the land located, the patent which had been issued to him was cancelled, the original warrant was redelivered to him.

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|---|---------|
| The evidence in the record shows that the land increased in value while the petitioner held it by the sum of..... | \$2,200 |
| And that the value of the improvements made by the petitioner apart from the value of the land was..... | 1,200 |

| | |
|--|--------------|
| And the plaintiff claims of the United States..... | <u>3,400</u> |
|--|--------------|

But the plaintiff has no legal ground of claim. The patent or grant of the United States contains no warranty or covenant of title, and the contract cannot be carried beyond its terms. By the settled rule of the common law, those terms do not make or imply a warranty or covenant of title. (Kent Com., 4 vol., pp. 471, 474, and notes.) Admitting that the petitioner was led into error and loss by the mistake of the officers in the land office, the United States are not liable in damages for the mistakes of their officers.

If the United States were liable as on a covenant of warranty of title, the rule of damages would be the value of the land when the warranty was made, or \$1 25 per acre, and no more. The petitioner has received that, or its equivalent, in the return of his warrant for a new location at \$1 25 per acre. He cannot hold this and have a claim for damages besides.

The return of the warrant was tantamount to the return of the purchase money for lands erroneously located; and this is the only measure of relief the statutes of the United States prescribe for lands purchased and of which the title fails. (4 Stat. 80, c. 5, Jan. 12, 1825.)

On the whole case, we are of the opinion that the petitioner is not entitled to relief.